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C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 000244

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [KDEM](#) [TH](#)

SUBJECT: THAILAND: PM'S DEMOCRAT PARTY IN SIMMERING LEGAL
BATTLE OVER OLD PARTY FINANCE ISSUES

REF: BANGKOK 227 (CHARTER CHANGE)

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Classified By: POL Counselor George Kent, reasons 1.4 (b, d)

SUMMARY AND COMMENT

11. (C) Even as the Democrat party struggles to manage the political fallout associated with spurning its coalition partners on the constitutional amendment push (reftel), another cloud looms on the horizon. The party stands accused by political opponents of running afoul of the Political Parties Act for two separate alleged transgressions from 2004-05, when they were in opposition. The current opposition Puea Thai party has packaged both allegations -- which include a charge the Democrats failed to declare an \$8.5 million donation in 2004, as well as a charge that the party misappropriated a \$1 million government subsidy in 2005 -- together into a single complaint that now sits before the Election Commission (EC). The EC must now determine whether to dismiss the case altogether, or refer the case to the Office of the Attorney General for a review by the Constitutional Court, which would then decide whether or not to dissolve the party.

12. (C) Comment: Not surprisingly, most of our Democrat interlocutors have dismissed the threat associated with this case, arguing that the charges were largely without merit and that the party would likely be absolved of any wrongdoing. Members of the opposition Puea Thai party and contacts from the smaller coalition parties have generally arrived at the same conclusion, but on the presumption that the government would be able to influence the Election Commission's decision and/or receive the assistance of the proverbial "unseen" hand. The second part of the case seems to be more serious, and it could still emerge as a nasty surprise, upsetting Thai politics either through another party dissolution or coalition discord serious enough to bring down the government. End Summary and Comment.

THE CASE AGAINST THE DEMOCRATS -- PART I

13. (SBU) The Democrat party stands accused by the opposition Puea Thai of two separate transgressions which have been packaged together into one complaint now in the hands of the EC. The first leg of the complaint -- which Puea Thai first raised in an unsuccessful March 19-20, 2009 no confidence motion against the Democrats -- accuses the party of concealing a 258 million baht (\$8.5 million) donation in 2004 from TPI Polene Public Company Limited, a large Thai corporation with construction and petrochemical interests then led by controversial CEO Prachai Liewpairattana. Puea Thai claims the Democrats circumvented the reporting requirements by funneling the donation through an advertising company associated with the party -- the Messiah Business and Creation Co. Ltd., thereby keeping the donation off of its books.

14. (SBU) Puea Thai has alleged that the Democrats failed to report the donation to the registrar of political parties as part of the compulsory end of year itemization of expenditures and income mandated by Article 46 of the Act on Political Parties under the 1997 Constitution. According to Puea Thai, this failure to report would also represent a breach of the donation declaration provision (Article 82) of the same law, which compels parties to report any and all donations to the EC by March of the following year. The Democrats deny they received any such a donation.

15. (SBU) At this stage the EC has still not determined whether the 1997 Constitution should apply to the TPI case, or if the 2007 Constitution, which came into force three years after the alleged transgression took place, should

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instead be applied retroactively as the appropriate legal framework to judge the case. The more germane question is whether the failure to report donations would cross the threshold of what it takes to dissolve a political party. According to Article 66 of the 1997 constitution, and its counterpart in the 2007 constitution, Article 94, party dissolution can only be triggered by acts that are undertaken to overthrow a democratic regime, acts which may be adverse to the democratic regime, acts which may endanger the security of the state, or other acts of intentional national subversion. In other words, if the EC decided that the Democrat party had intentionally covered up a donation from TPI, the EC would then have to make a judgment as to whether or not that transgression threatened the government in some fashion.

THE CASE -- PART II

16. (C) The second leg of the complaint appears to have more legal merit to observers of the case, and thus more potential to cause problems for the party than the first. Puea Thai has accused the Democrat party of misusing a 29 million baht (\$1 million) subsidy it received from the government in 2005. Puea Thai has alleged that of the original 29 million baht subsidy, approximately 18 million baht was funneled directly to Democrat legislators for their own personal use. Puea Thai has argued the alleged transgression represented a collective violation of Articles 65, 82, and 93 of the Act on Political Parties under the 2007 Constitution, which the EC has already determined is the appropriate legal lens through which to view the complaint.

17. (C) Unlike with the TPI piece of the case, the legal implications of this complaint are relatively clear. If in fact the EC determines the party abused a government subsidy (Article 82) and/or members of the party received money illegally (Article 65), the party would then be subject to possible dissolution (Article 93). The question is whether the EC believes there is sufficient evidence to substantiate Puea Thai's accusation.

¶8. (C) EC Commissioner Apichart told us January 28 that he believed the case would be decided "some time in March." Apichart told us the decision on the case would not in any way be predicated on the timing involved with the verdict in the Thaksin assets case (February 26), as has been suggested in the media, but would instead hinge on the time it took him to thoroughly read through the 7000 pages of material packed into the collective case file.

WHY THE DEMOCRATS SEEM UNCONCERNED - THEORIES

¶9. (C) Most commentators outside of the Democrat party suggest the Democrats have nothing to worry about. Suranand Vejjajiva, a political commentator, former Minister in Thaksin's cabinet, and first cousin of the current Prime Minister, told us January 12 that while he believed -- legally speaking -- that the case had some merit, there was no doubt in his mind it would be dismissed, because "the government would not allow it to go anywhere." Puea Phaendin MP Satit Tepwongsirirut suggested if the case made it to the Constitutional Court, the Court could easily drag out its review until the end of the government's term in December of ¶2011. Weerasak Kowsurat, a former Minister of Tourism and Sports in the Samak administration and a banned politician himself, shared with us January 28 the "unseen hand" conspiracy theory - unspecified forces behind the formation of the current government could use the case as leverage against the Democrats.

¶10. (C) Most of the Democrats we have talked to have also expressed confidence the party would emerge from the legal

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ordeal unscathed. MP Nipphon Bunyamanee told us December 18 the party would be able disprove all the allegations without any negative ramifications for the party moving forward. MP Sukit Attopakorn also told us December 18 that he expected the party to be acquitted. According to Sukit, even if the case did move to the Constitution Court, it would take so long for the case to be tried that the government could effectively "run out the clock."

WHY THEY ARE CONCERNED

¶11. (C) Not all members of the Democrat party are sanguine about the case. Isra Sunthornvut, the Deputy Secretary-General to the Prime Minister for Political Affairs, told us January 22 that the outcome in the case was very much in question. Isra said the party was watching it very closely and he characterized the charges as "problematic." When we commented that, even if the case advanced to Constitution Court the next step in the legal process would be so time consuming the party seemingly had little to worry about, Isra told us that if the case got to that stage, the real issue would be keeping the coalition together. Referencing the chinks in the coalition armor that had already emerged on the Constitutional amendment issue (reftel), Isra told us that if the legal case against the party moved forward, he feared the Democrats would have a hard time keeping the coalition together. Isra believed that if the case advanced, several of the coalition parties would be prepared to jump ship.

¶12. (C) Several contacts have told us the case would have reverberations for the government regardless of the EC verdict. Suranand told us that if the EC dismissed the case outright, the red-shirts would quickly seize upon the verdict as further evidence of the alleged "double standards" inherent in the legal system, an opinion seconded by Supachai Jaisamut, PJT MP and party spokesman. Regardless of whether there were major legal differences between the cases that led to the dissolution of Puea Thai's predecessors Thai Rak Thai (TRT) and the People's Power Party (PPP), and the criminal

complaint against the Democrat party, the red shirts would blur such distinctions (Note: PPP was dissolved in 2008 for committing election fraud under the 2007 Constitution; TRT was dissolved in 2007 after the 2006 coup for retroactively violating the 2007 Constitution by obtaining state power through unconstitutional means. End Note.)

WHAT NEXT?

[¶](#)13. (C) The next step decision rests in the hands of Election Commission Chair Apichart Sukhaggononda, who was vested by the EC with the full authority to adjudicate the case one way or another. Apichart has already suggested publicly that he was inclined to dismiss the case. While that seems to be the most likely outcome, no one can be sure at this stage.

JOHN